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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2009-254*

13 **NICOLE MARIA METZ**
2058 Mezzamonte Court
Livermore, CA 94550

A C C U S A T I O N

14 Registered Nurse License No. 545843
Public Health Nurse Certification No. 60638

15 Respondent.
16

17 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
21 Affairs.

22 2. On or about July 24, 1998, the Board issued Registered Nurse License
23 Number 545843 to Nicole Maria Metz ("Respondent"). The Registered Nurse License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on April
25 30, 2010, unless renewed.

26 3. On or about June 3, 1999, the Board issued Public Health Nurse
27 Certification Number 60638 to Nicole Maria Metz ("Respondent"). The Public Health Nurse
28 Certification was in full force and effect at all times relevant to the charges brought herein and

1 will expire on April 30, 2010, unless renewed.

2 **JURISDICTION**

3 4. Section 2750 of the Business and Professions Code ("Code") provides, in
4 pertinent part, that the Board may discipline any licensee, including a licensee holding a
5 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
6 section 2750) of the Nursing Practice Act.

7 5. Code section 2764 provides, in pertinent part, that the expiration of a
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
9 against the licensee or to render a decision imposing discipline on the license. Under Code
10 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
11 years after the expiration.

12 6. Code section 118, subdivision (b), provides, in pertinent part, that the
13 suspension, expiration or forfeiture by operation of law of a license shall not deprive the Board of
14 jurisdiction to proceed with a disciplinary action during the period within which the license may
15 be renewed, restored, reissued or reinstated.

16 **STATUTORY PROVISIONS**

17 7. Section 2761 of the Code states:

18 "The board may take disciplinary action against a certified or licensed nurse or
19 deny an application for a certificate or license for any of the following:

20 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

21 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
22 nursing functions.

23

24 8. Code section 2762 states, in pertinent part that, in addition to other acts
25 constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice
26 Act], it is unprofessional conduct for a person licensed under this chapter to do any of the
27 following:

28

1 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
2 entries in any hospital, patient, or other record pertaining to the substances described in
3 subdivision (a) of this section.

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6 9. California Code of Regulations, title 16, section 1442, states:

7 "As used in Section 2761 of the code, 'gross negligence' includes an extreme
8 departure from the standard of care which, under similar circumstances, would have ordinarily
9 been exercised by a competent registered nurse. Such an extreme departure means the repeated
10 failure to provide nursing care as required or failure to provide care or to exercise ordinary
11 precaution in a single situation which the nurse knew, or should have known, could have
12 jeopardized the client's health or life."

13 10. Code section 125.3 provides, in pertinent part, that the Board may request
14 the administrative law judge to direct a licentiate found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Falsify Patient and/or Hospital Records)**

19 11. Respondent is subject to disciplinary action under section 2761(a) of the
20 Code, on the grounds of unprofessional conduct, as defined by section 2762(e) of the Code, in
21 that on or about March 21, 2005 and March 22, 2005, while employed as a registered nurse at
22 Lucille Packard Children's Hospital in Palo Alto, California (LPCCH), she falsified, made grossly
23 incorrect, grossly inconsistent, or unintelligible entries in hospital and/or patient records in the
24 following respects:

25 **Patient B**

26 a. On or about March 21, 2005, at 20:14 hours, Respondent withdrew 2 mg
27 of Versed from the Pyxis for this patient; however, there was no physician's order for the Versed.
28 Respondent failed to chart the administration or wastage of the Versed or otherwise account for

1 the disposition of the Versed in any patient or hospital record.

2 **Patient C**

3 b. On or about March 22, 2005, at approximately 06:00 hours, Respondent
4 withdrew 2 mg. of Versed from the Pyxis for this patient; however, there was no physician's
5 order for the Versed. Respondent failed to chart the administration or wastage of the Versed or
6 otherwise account for the disposition of the Versed in any patient or hospital record.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Gross Negligence)**

9 12. Respondent is subject to disciplinary action under section 2761(a)(1) of
10 the Code, on the grounds of unprofessional conduct, in that on or about March 21, 2005 and
11 March 22, 2005, while on duty as a registered nurse at LPCH, Respondent was guilty of gross
12 negligence, within the meaning of Title 16, California Code of Regulations section 1442, as set
13 forth in paragraph 10, above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 545843, issued
18 to Nicole Maria Metz;

19 2. Revoking or suspending Public Health Nurse Certification Number 60638,
20 issued to Nicole Maria Metz;

21 3. Ordering Nicole Maria Metz to pay the Board of Registered Nursing the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
23 125.3;

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4. Taking such other and further action as deemed necessary and proper.

DATED: 4/17/09


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant